

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:

Dayton, Nevada, Mercury Site

Respondents:

John Benum,
Peggy Benum, and
State of Nevada Department of
Transportation

EPA ORDER NO.
91-14

Proceeding under Section 106 of the
Comprehensive Environmental Response,
Compensation and Liability Act of 1980,
as amended by the Superfund Amendments
and Reauthorization Act of 1986
(42 U.S.C. Section 9606(a))

I. Jurisdiction

This Administrative Order ("Order") is issued on this date to Respondents, pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580,

1 January 23, 1987, 52 Federal Register 2923, and further delegated
2 to the Assistant Administrator for Solid Waste and Emergency
3 Response and to the EPA Regions by U.S. EPA Delegation Nos. 14-
4 14-A and 14-14-B.

5 By copy of this Order the State of Nevada has been notified
6 of the issuance of this Order as required by Section 106(a) of
7 CERCLA, 42 U.S.C. Section 9606(a).

8 This Order requires the Respondents to undertake and com-
9 plete emergency removal activities to abate an imminent and sub-
10 stantial endangerment to the public health and welfare or the en-
11 vironment that may be presented by the actual or threatened
12 release of hazardous substances.

13 II. Findings of Fact

14 Based on available information, including that contained in
15 the Administrative Record File in this matter, U.S. EPA hereby
16 finds:

17 A. Site Description

18 1. Physical Location:

19 The Dayton, Nevada, Mercury Site, (the "Site") is located in
20 Dayton, County of Lyon, State of Nevada. The Site is bounded by
21 U.S. Highway 50 on the east, Douglas Street to the north, and
22 River Road to the west. The Site is located in a lot adjacent to
23 the "S&S Mini-Mart", and extends south to the Dayton public park.
24 Residences line the western border across the one-lane access
25 road, River Road. A fence separates the public park from the

1 Site to the south.

2 2. Site Characteristics

3 Mercury-contaminated tailings piles and sediments are
4 present on the Site. The area is traversed by local residents
5 and accessible to nearby children. Except for the side adjacent
6 to the closed public park, the area is not enclosed by a fence.
7 With the exception of the tailings piles, the topography of the
8 Site is relatively flat.

9 3. National Priority List Status (NPL) Status:

10 The Carson River Mercury Site, which encompasses the Carson
11 River watershed is on the National Priorities List. The Dayton,
12 Nevada, Mercury Site is within the watershed of the Carson River
13 and is within the geographic area of the Carson River Mercury NPL
14 site.

15 B. Incident/Release Characteristics:

16 The following conditions bearing on the need for initiating
17 a removal action exist at the Site:

18 1. There is an actual or potential exposure to hazardous
19 substances or pollutants or contaminants to nearby populations,
20 animals and the food chain. Without fencing or the removal of
21 the mercury-contaminated tailings piles and sediments present at
22 the Site, there is a direct dermal, ingestion and inhalation con-
23 tact threat for people in that the Site is being regularly
24 traversed by local residents, and used as a play area by
25 children.

1 2. There exist high levels of hazardous substances or
2 pollutants or contaminants in soils largely at or near the sur-
3 face, that may migrate. Mercury concentrations in surface sedi-
4 ments and piles greatly exceed all regulatory and health-related
5 levels of concern, and are subject to movement through windy and
6 rainy weather, or by being disturbed.

7 3. Weather conditions that may cause hazardous substances
8 or pollutants or contaminants to migrate when released are not
9 unusual in the vicinity of the Site. These weather conditions
10 include frequent high winds and the potential for water movement.
11 These conditions could easily transport contaminated soils off-
12 site through water or air-borne mechanisms. Nearby residents are
13 exposed when wind-borne sediments blow through their residences,
14 and water-borne run-off may eventually reach the Carson River.

15 C. Quantity and Types of Substances Present

16 1. Chemical Categories Present

17 Mercury is present on-site in soil and sediments which ap-
18 pear to be from old mill tailings. The source of this mercury
19 was likely from its use in amalgamating silver and/or gold ore in
20 the past. EPA has found concentrations of mercury as high as 670
21 ppm in the soil and sediments at the Site.

22 2. Sampling Methodology

23 All sampling and analysis was conducted in accordance with
24 EPA standard field operating procedures. Samples were analyzed
25 onsite using an XRF analyzer, followed by offsite laboratory

1 confirmation.

2 D. Threats to Public Health and Welfare

3 Inhalation or ingestion of mercury by persons at or near the
4 Site poses a serious health risk. Mercury is a strong neurotoxin
5 and is a well documented cause of brain and nervous disorders.
6 Mercury is a hazardous substance under Section 102(a) of CERCLA
7 and 40 C.F.R. Section 302.4.

8 E. Respondents

9 1. John and Peggy Benum are the owners of a portion of the
10 Site. They acquired title to their portion of the Site on June
11 4, 1986.

12 2. The State of Nevada owns property extending 100 feet in
13 both directions from the center line of U.S. Highway 50. This
14 property encompasses a portion of the Site, and a portion of the
15 tailings piles.

16 F. Threats to the Environment

17 If the Site is not the subject of further disturbance, the
18 mercury should not be further spread by wind and rain. Absent a
19 fence, human activity could further disturb the surface resulting
20 in wind and rain borne releases. This disturbance may result in
21 more mercury entering the Carson River drainage, which further
22 exacerbates the problem of uptake of mercury by the aquatic food
23 chain. Wind-borne spreading of mercury would also result in an
24 increased potential for inhalation and ingestion exposure by
25 wildlife in the area.

1 endangerment to the public health, welfare, or the environment.

2 B. The actions required by this Order, if properly per-
3 formed, are consistent with the National Contingency Plan (NCP),
4 40 C.F.R. Part 300, and CERCLA, and are reasonable and necessary
5 to protect the public health, welfare and the environment.

6 C. The conditions present at the Facility constitute a
7 threat to public health or the welfare or the environment based
8 upon consideration of the factors set forth in the NCP at 40
9 C.F.R. Section 300.415(b).

10 **V. Work to be Performed**

11 Based upon the Findings of Fact, Conclusions of Law and
12 Determinations, and pursuant to Section 106(a) of CERCLA, 42
13 U.S.C. Section 9606(a), it is hereby Ordered that Respondents un-
14 dertake the following actions under the direction of EPA's On-
15 Scene Coordinator (OSC).

16 1. The Respondents shall implement the activities as set forth
17 in this part. Respondents shall implement all work in confor-
18 mance with Occupational Safety Health Administration (OSHA)
19 regulations found in 29 C.F.R. Part 1910.120.

20 2. Within 30 days of the effective date of this Order, Respon-
21 dents shall fence and post all areas of the site contaminated
22 with mercury in excess of 25 ppm. Respondents shall install and
23 maintain fencing (6' in height topped with 3 strand barbed wire)
24 around the contaminated areas of the Site to ensure that the Site
25 is restricted from public access. Within 60 days of the effec-

1 tive date of this order, Respondents shall record a copy of this
2 order in the chain of title to notify subsequent purchasers of
3 the presence of mercury at the site.

4 3. Respondents may propose an alternative means of controlling
5 public access to the contaminated areas, such as removal of the
6 contamination, or capping of the contaminated area. In the event
7 Respondents elect to control public access through some means
8 other than fencing and posting of the site, Respondents shall
9 submit a workplan for such alternative within 14 days of the ef-
10 fective date of this order. Any such workplan will be subject to
11 review and approval by EPA prior to initiation of any on-site
12 work other than fencing and posting. In no event shall any al-
13 ternative proposal allow continued public access to the con-
14 taminated areas of the site within 30 days after the effective
15 date of the order. Any proposal which allows contamination in
16 excess of 25 ppm mercury to remain on-site must also provide for
17 notice to subsequent purchasers in the chain of title. If
18 Respondents remove the contamination, contaminated material
19 should be removed to an approved treatment facility (heap-
20 leacher) or other lawful destination only after obtaining the
21 necessary permits. If Respondents cover the contaminated
22 material, Respondents must cover all areas contaminated with mer-
23 cury greater than 25 ppm mercury with 24 inches of compacted
24 clean fill (containing less than 25 ppm mercury), and re-vegetate
25 the Site to prevent the risks of further exposure to residual

1 amounts of mercury at the Site.

2 4. Each Respondent shall fully implement the requirements of
3 this Order within the required time periods, and shall fully
4 cooperate with each other in carrying out any and all activities
5 pursuant to this Order. Respondents shall inform EPA at least
6 forty-eight (48) hours prior to any on-site work pursuant to this
7 Order.

8 5. Respondents shall perform all sampling and analysis consis-
9 tent with the "Removal Program Quality Assurance/Quality Control
10 Interim Guidance: Sampling, QA/QC Plan and Data Validation", EPA
11 OSWER Directive 9360.4-01, dated February 2, 1989.

12 6. EPA has appointed an On-Scene Coordinator (OSC) for the Site
13 who shall have the authority vested in an On-Scene Coordinator by
14 40 C.F.R. Part 300, as amended, including the authority to halt,
15 conduct, or direct any work required by this Order, or to direct
16 any other response action undertaken by U.S. EPA or the Respon-
17 dents at the Site. The On-Scene Coordinator for the Site for
18 the purposes of this Order is:

19 Robert Mandel
20 United States Environmental Protection Agency, Region 9
21 Mail Code H-8-3
22 75 Hawthorne Street
23 San Francisco, California 94105
24 (415) 744-2290

25 7. EPA will not grant any extensions to the above time frames
without sufficient cause. All extensions must be requested, in
writing, and shall not be deemed accepted unless approved, in
writing, by U.S. EPA.

1 8. All instructions by the U.S. EPA On-Scene Coordinator or his
2 designated alternate shall be binding upon the Respondents as
3 long as those instructions are not clearly inconsistent with the
4 National Contingency Plan.

5 9. To the extent that the Site or other areas where work under
6 this Order is to be performed is owned by, or in possession of,
7 someone other than the Respondents, Respondents shall obtain all
8 necessary access agreements. In the event that after using their
9 best efforts Respondents are unable to obtain such agreements,
10 Respondents shall immediately notify U.S. EPA.

11 10. Respondents shall provide access to the Site to U.S. EPA
12 employees, contractors, agents, and consultants at reasonable
13 times, and shall permit such persons to be present and move
14 freely in the area in order to conduct inspections, including but
15 not limited to taking of photographs and videotapes of the Site,
16 implementation of cleanup/stabilization work, sampling to monitor
17 the work under this Order, and such other activities which the
18 U.S. EPA determines to be necessary.

19 11. Nothing contained herein shall be construed to prevent U.S.
20 EPA from seeking legal or equitable relief to enforce the terms
21 of this Order, or from taking other legal or equitable action as
22 it deems appropriate and necessary, or from requiring the Respon-
23 dents in the future to perform additional activities pursuant to
24 CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable
25 law.

1 12. The provisions of this Order and the directions of the On-
2 Scene Coordinator shall be binding on the employees, agents, suc-
3 cessors, and assignees of the Respondents.

4 13. This Order shall be effective five (5) calendar days follow-
5 ing the date it is signed.

6 14. Within two (2) calendar days after the effective date of
7 this Order, Respondents shall provide notice, verbally or in
8 writing, to U.S. EPA stating their intention to comply with the
9 terms of this Order. Notice shall be made to the On-scene Coor-
10 dinator, Robert Mandel, at the address listed above. Verbal
11 notification must be followed in writing within five (5) calendar
12 days of the effective date of the Order. In the event any
13 Respondent fails to provide such notice, such Respondent shall be
14 deemed not to have complied with the terms of this Order.

15 15. Copies of all records and files relating to hazardous sub-
16 stances found on the Site shall be retained by Respondents for
17 six years following completion of the activities required by this
18 Order and shall be made available to the U.S. EPA prior to the
19 termination of the removal activities under this Order.

20 16. Respondents shall submit a final report summarizing the ac-
21 tions taken to comply with this Order. The report may contain,
22 as appropriate: identification of the Site, a description of the
23 locations and types of hazardous substances encountered at the
24 Site upon the initiation of work performed under this Order, a
25 chronology and description of the actions performed (including

1 both the organization and implementation of response activities),
2 a listing of the resources committed to perform the work under
3 this Order (including financial, personnel, mechanical and tech-
4 nological resources), identification of all items that affected
5 the actions performed under the Order and discussion of how all
6 problems were resolved, a discussion of removal and disposal op-
7 tions considered for any hazardous substances that may be removed
8 from the Site, and a presentation of the analytical results of
9 all sampling and analyses performed and accompanying appendices
10 containing all relevant paperwork accrued during the action
11 (e.g., manifests, invoices, bills, contracts, permits). The
12 final report shall also include an affidavit from a person who
13 supervised or directed the preparation of that report. The af-
14 fidavit shall certify under penalty of law that based on personal
15 knowledge and appropriate inquiries of all other persons involved
16 in preparation of the report, the information submitted is true,
17 accurate and complete to the best of the affiant's knowledge and
18 belief. The report shall be submitted within thirty (30) days of
19 completion of the work required by the U.S. EPA.

20 17. All notices, reports and requests for extensions submitted
21 under terms of this Order shall be sent by certified mail, return
22 receipt requested, and addressed to the following:

23 one copy Robert Mandel, H-8-3
24 On-Scene Coordinator
25 Environmental Protection Agency
 75 Hawthorne Street
 San Francisco, CA 94105

1
2 18. If any provision of this Order is deemed invalid or unen-
3 forceable, the balance of this Order shall remain in full force
4 and effect.

5 VI. Administrative Record File

6 The Administrative Record File supporting the selection of
7 the response action for this site will be available for review on
8 normal business days between the hours of 9:00 a.m. and 5:00 p.m.
9 in the Superfund Records Center, Environmental Protection Agency,
10 Region IX, 75 Hawthorne Street, San Francisco, California.

11 VII. Opportunity to Confer

12 Within five (5) calendar days after the date of signing of
13 this Order, Respondents may request a conference with the EPA.
14 Any such conference shall be held within seven (7) calendar days
15 from the date of request, unless extended by mutual agreement of
16 the parties. At any conference held pursuant to the request,
17 Respondents may appear in person, or be represented by an attor-
18 ney or other representative. If any Respondent desires such a
19 conference, the Respondent shall make such a request to one of
20 the persons identified as a Contact on the list attached hereto.
21 If such a conference is held, Respondents may present any
22 evidence, arguments or comment regarding this Order, its ap-
23 plicability, any factual determinations upon which the Order is
24 based, the appropriateness of any any action which Respondents
25 are ordered to take, or any other relevant and material issue.

1 Any such evidence, arguments or comments should be reduced to
2 writing and submitted to EPA within two (2) calendar days follow-
3 ing the conference. If no conference is requested, any such
4 evidence, arguments or comments must be submitted in writing
5 within five (5) calendar days following the signing of this Or-
6 der. Any such writing should be directed to Michael Hingerty,
7 Assistant Regional Counsel, EPA, 75 Hawthorne Street, San Fran-
8 cisco, CA 94105; (415) 744-1315. Respondents are hereby placed
9 on notice that U.S. EPA will take any action which may be neces-
10 sary in the opinion of U.S. EPA for the protection of public
11 health and welfare and the environment, and Respondents may be
12 liable under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a),
13 for the costs of those government actions. Neither the request
14 for not the holding of a conference pursuant to this part shall
15 extend any deadlines or excuse any non-compliance with the terms
16 of this Order, unless U.S. EPA provides in writing for such ex-
17 tension or other relief.

18
19 **VIII. Penalties For Noncompliance**

20 Respondents are advised pursuant to Section 106(b) of
21 CERCLA, 42 U.S.C. Section 9606(b), that willful violation or
22 failure or refusal to comply with this Order, or any portion
23 thereof, may subject the Respondents to a civil penalty of no
24 more than \$25,000 per day for each day in which such violation
25 occurs, or such failure to comply continues. Failure to comply

1 with this Order, or any portion thereof, without sufficient cause
2 may also subject the Respondents to liability for punitive
3 damages in an amount three times the amount of any cost incurred
4 by the government as a result of the failure of Respondents to
5 take proper action, pursuant to Section 107(c)(3) of CERCLA, 42
6 U.S.C. Section 9607(c)(3).

8 IX. Compliance With Other Laws

9 Respondents shall comply with all federal, state and local
10 laws and regulations in carrying out the terms of this Order.
11 All hazardous substances removed from the facility shall be
12 handled in accordance with the Resource Conservation and Recovery
13 Act of 1976, 42 U.S.C. Section 6921, et seq., the regulations
14 promulgated under that Act, and Section 121(d)(3) of CERCLA, 42
15 U.S.C. Section 9621(d)(3).

17 X. Endangerment During Implementation

18 The OSC may determine that acts or circumstances (whether
19 related to or unrelated to this Order) may endanger human health,
20 welfare or the environment and may order the Respondents to stop
21 further implementation of this Order until the endangerment is
22 abated.

23 XI. Government Not Liable

24 The United States Government and its employees and other
25 representatives shall not be liable for any injuries or damages

1 to persons or property resulting from the acts or omissions of
2 Respondents, their employees or other representatives caused by
3 carrying out this Order. For the purposes of this Order, the
4 United States Government is not a party to any contract with the
5 Respondents.

6
7
8 IT IS SO ORDERED ON THIS 4th day of June, 1991.

9 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

10
11 By:  _____

12 Jeff Zelikson, Director
13 Hazardous Waste Management Division
14 United States Environmental Protection Agency
15 Region IX
16
17
18
19
20
21
22
23
24
25

1 Contacts:
2 Robert Mandel, H-8-3
3 On-Scene Coordinator
4 Environmental Protection Agency
5 75 Hawthorne Street
6 San Francisco, CA 94105
7 (415) 744-2290
8
9 Michael Hingerty, RC-3-2
10 Office of Regional Council
11 Environmental Protection Agency
12 75 Hawthorne Street
13 San Francisco, CA 94105
14 (415) 744-1315
15
16 Brent Maier
17 Case Enforcement Officer
18 Environmental Protection Agency
19 75 Hawthorne Street
20 San Francisco, CA 94105
21 (415) 744-2299
22
23
24
25